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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/740,247	12/18/2000	Lorin Evan Ullmann	AUS920000830-US1	4884

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02/09/2004

Anne Vachon Dougherty
3173 Cedar Road
Yorktown Heights, NY 10598

EXAMINER

PHILLIPS, HASSAN A

ART UNIT	PAPER NUMBER
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2151

DATE MAILED: 02/09/2004

3

Please find below and/or attached an Office communication concerning this application or proceeding.

2

Office Action Summary

Application No.

09/740,247

Applicant(s)

ULLMANN, LORIN EVAN

Examiner

Hassan Phillips

Art Unit

2153

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 January 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2. 6) ☐ Other: _____

DETAILED ACTION

Information Disclosure Statement

The Information Disclosure Statement (IDS) filed on January 16, 2001 has been received and considered by the examiner.

Specification

The examiner requests the addition of line numbers to all of the pages of the disclosure.

Claim Rejections - 35 USC § 112

Claims 1 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 17 recite the limitation "the physical network address" in line 8, of claim 1, and pg. 16, line 3, of claim 17. Claims 1 and 17 also recite the limitation "the protocol request" in line 11, of claim 1, and pg. 16, line 6, of claim 17. Claims 1 and 17 further recite the limitation "the application" in line 14, of claim 1, and pg. 16, line 9, of claim 17. There is insufficient antecedent basis for these limitations in the claims. In order to complete the review of the application for patent, the examiner has interpreted "the physical network address" to mean a physical network address. The examiner has interpreted "the protocol request" to mean a request of a specific protocol. The

examiner has furthermore interpreted "the application" to mean the, "at least one endpoint" in claims 1 and 17.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 6, 17-19, are rejected under 35 U.S.C. 103(a) as being unpatentable over Killian U.S. Patent, 6,438,592.

In considering claims 1 and 17, Killian discloses a method for providing transmission of data objects, together with performance monitoring, to a plurality of computing locations having at least one endpoint, comprising the steps of:

- a) requesting a data object from at least one server, (col. 3, lines 23-33);
- b) creating an IP message containing the requested data object, with the determined physical network address of the client, (col. 2, lines 36-39, and col. 8, lines 14-22);
- c) registering an HTTP request with a back end server/firewall 106 to obtain a browserID/session number 138 for the IP message, adding the session number to the IP message, and returning the IP message to the client, (col. 8, lines 64-67, col. 9, lines 1-6).

Although the disclosed method of Killian shows substantial features of the claimed invention, it fails to explicitly disclose:

- a) decoding the endpoint to determine the physical network address for the endpoint.

Nevertheless, the method of Killian discloses:

- a) relaying a URL request with a client's address to a backend server, (col. 8, lines 7-14).

Although not explicitly stated, it is obvious, if not implicit, that the spreader computer decodes the client's endpoint, in order to determine the address of the requesting client, before relaying it to a backend server. This would have been obvious to a person of ordinary skill in the art, at the time of the present invention. Therefore, the claimed inventions (claims 1 and 17) are obvious in the methods disclosed by Killian.

In considering claims 2 and 18, see Killian, col. 3, lines 34-40.

In considering claim 3, see Killian, col. 8, lines 57-67, col. 9 lines 1-6.

In considering claim 4, see Killian, col. 4, lines 63-67, col. 5 lines 1-2. Although not explicitly stated, it is obvious, if not implicit, that continued usage of the performance monitoring instructions included in the IP message is determined by the performance message response.

In considering claim 6, see Killian, col. 13, lines 66-67, col. 14 lines 1-10.

In considering claim 19, see Killian, col. 4, lines 63-67, col. 5 lines 1-2. Although not explicitly stated, it is obvious, if not implicit, that continued usage of the performance monitoring instructions included in the IP message is determined by the performance message response.

Claims 5, 7, 20, are rejected under 35 U.S.C. 103(a) as being unpatentable over Killian, and further in view of Okanoya et al., U.S. Patent, 6,128,657.

In considering claims 5 and 20, although the disclosed method of Killian shows substantial features of the claimed invention, it fails to explicitly disclose:

- a) retrieving a stored maximum of requests for the client, obtaining a current request count, and comparing the request count to the configured maximum, notifying the client of the results of the comparing.

Nevertheless, in a similar field of endeavor, Okanoya et al. discloses a load sharing method comprising:

- a) retrieving a stored maximum of requests for a server, obtaining a current request count for the server, and comparing the current count to the configured maximum and notifying the server of the results of comparing, (col. 19, lines 41-67, col. 20, lines 1-32).

Comparing a count of requests, for a resource, to a stored maximum is well known in the art. Thus, given the teachings of Okanoya et al., it would have been

Art Unit: 2153

obvious to a person of ordinary skill in the art, at the time of the present invention, to modify the teachings of Killian, in order to balance the amount of requests a client sends to a server for a resource. This would have allowed a client to realize that an excess of requests have been submitted, and prevent the client from sending any more unnecessary requests that would exceed the capacity of the system. Thus, it would have been apparent to one of ordinary skill in the art to compare a current count of requests to a configured maximum in order to notify a client that requests are about to exceed the capacity of the system, Okanoya et al., col. 20, lines 16-20. Therefore, the claimed inventions (claims 5 and 20) would have been an obvious modification of the methods disclosed by Killian, in view of Okanoya et al.

In considering claim 7, see Killian, col. 13, lines 66-67, col. 14 lines 1-10.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Killian, and further in view of Osterman et al., U.S. Patent, 5,864,669.

In considering claim 8, although the disclosed method of Killian shows substantial features of the claimed invention, it fails to explicitly disclose:

- a) identifying an alternative endpoint to the client.

Nevertheless, in a similar field of endeavor, Osterman et al. discloses a method for selecting an application at a server comprising:

- a) identifying an alternative endpoint to the server, (col. 4, lines 54-67, col. 5, lines 1-54).

Identifying alternative endpoints to access a client is well known in the art. Thus, given the teachings of Osterman et al., it would have been obvious to a person of ordinary skill in the art, at the time of the present invention, to modify the teachings of Killian, in order to identify alternative endpoints in accessing the client. This would have allowed the transport of messages through different endpoints. Thus, it would have been apparent to one of ordinary skill in the art to identify alternative endpoints in order to transmit messages to the client via alternate interfaces, Osterman et al., col. 1, lines 38-45. Therefore, the claimed invention (claim 8) would have been an obvious modification of the methods disclosed by Killian, in view of Osterman et al.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Killian, in view of Okanoya et al., and further in view of Osterman et al.

In considering claim 9, although the disclosed method of Killian, in view of Okanoya et al., shows substantial features of the claimed invention, it fails to explicitly disclose:

- a) identifying an alternative endpoint to the client.

Nevertheless, in a similar field of endeavor, Osterman et al. discloses a method for selecting an application at a server comprising:

- a) identifying an alternative endpoint to the server, (col. 4, lines 54-67, col. 5, lines 1-54).

Identifying alternative endpoints to access a client is well known in the art. Thus, given the teachings of Osterman et al., it would have been obvious to a person of

ordinary skill in the art, at the time of the present invention, to modify the teachings of Killian, in order to identify alternative endpoints in accessing the client. This would have allowed the transport of messages through different endpoints. Thus, it would have been apparent to one of ordinary skill in the art to identify alternative endpoints in order to transmit messages to the client via alternate interfaces, Osterman et al., col. 1, lines 38-45. Therefore, the claimed invention (claim 9) would have been an obvious modification of the methods disclosed by Killian, in view of Osterman et al.

Claims 10-14, are rejected under 35 U.S.C. 103(a) as being unpatentable over Killian.

In considering claim 10, Killian discloses a method for providing transmission of data objects, together with performance monitoring, to a plurality of computing locations having at least one endpoint, comprising:

- a) a spreader computer 104 for establishing a session for monitoring an act, associated with one or more downloadable objects, at a client, (col. 8, lines 7-45).

Although the disclosed method of Killian shows substantial features of the claimed invention, it fails to explicitly disclose:

- a) at least one object request broker for creating at least one application action object in response to an application request.

Nevertheless, the method of Killian discloses:

- a) a backend server for creating IP messages that includes objects, in response to an object request, (col. 8, lines 14-22).

Although not explicitly stated, it is obvious, if not implicit, that the backend server has means for acting as the object request broker in the applicant's disclosure. This would have been obvious to a person of ordinary skill in the art, at the time of the present invention. Therefore, the claimed invention (claim 10) is obvious in the methods disclosed by Killian.

In considering claim 11, see Killian, col. 8, lines 7-14. Although not explicitly stated, it is obvious, if not implicit, that the system comprises at least one decoder component for decoding the endpoint.

In considering claim 12, see Killian, col. 3, lines 34-40.

In considering claim 13, see Killian, col. 8, lines 57-67, col. 9 lines 1-6.

In considering claim 14, see Killian, col. 4, lines 63-67, col. 5 lines 1-2. Although not explicitly stated, it is obvious, if not implicit, that there is a determining component for the performance message where continued usage of the performance monitoring instructions included in the IP message is determined by the performance message response.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Killian, and further in view of Okanoya et al.

In considering claim 15, although the disclosed method of Killian shows substantial features of the claimed invention, it fails to explicitly disclose:

- a) a storage location for storing configuration information regarding maximum requests per client and wherein the determining component includes a comparator for comparing the current count of requests at the client to the stored maximum requests for that client.

Nevertheless, in a similar field of endeavor, Okanoya et al. discloses a load sharing method comprising:

- a) a storage location for storing configuration information regarding maximum request per client and comparing the current count of request at the client to the stored maximum requests for that client, (col. 19, lines 41-67, col. 20, lines 1-32).

Comparing a count of requests, for a resource, to a stored maximum is well known in the art. Thus, given the teachings of Okanoya et al., it would have been obvious to a person of ordinary skill in the art, at the time of the present invention, to modify the teachings of Killian, in order to balance the amount of requests a client sends to a server for a resource. This would have allowed a client to realize that an excess of requests have been submitted, and prevent the client from sending any more unnecessary requests that would exceed the capacity of the system. Thus, it would have been apparent to one of ordinary skill in the art to compare a current count of

requests to a configured maximum in order to notify a client that requests are about to exceed the capacity of the system, Okanoya et al., col. 20, lines 16-20. Therefore, the claimed invention (claim 15) would have been an obvious modification of the methods disclosed by Killian, in view of Okanoya et al.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Killian, and further in view of Osterman et al.

In considering claim 16, although the disclosed method of Killian shows substantial features of the claimed invention, it fails to explicitly disclose:

- a) identifying an alternative endpoint to the client.

Nevertheless, in a similar field of endeavor, Osterman et al. discloses a method for selecting an application at a server comprising:

- a) identifying an alternative endpoint to the server, (col. 4, lines 54-67, col. 5, lines 1-54).

Identifying alternative endpoints to access a client is well known in the art. Thus, given the teachings of Osterman et al., it would have been obvious to a person of ordinary skill in the art, at the time of the present invention, to modify the teachings of Killian, in order to identify alternative endpoints in accessing the client. This would have allowed the transport of messages through different endpoints. Thus, it would have been apparent to one of ordinary skill in the art to identify alternative endpoints in order to transmit messages to the client via alternate interfaces, Osterman et al., col. 1, lines

38-45. Therefore, the claimed invention (claim 16) would have been an obvious modification of the methods disclosed by Killian, in view of Osterman et al.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Killian, and further in view of Osterman et al.

In considering claim 21, although the disclosed method of Killian shows substantial features of the claimed invention, it fails to explicitly disclose:

- a) identifying an alternative endpoint to the client.

Nevertheless, in a similar field of endeavor, Osterman et al. discloses a method for selecting an application at a server comprising:

- a) identifying an alternative endpoint to the server, (col. 4, lines 54-67, col. 5, lines 1-54).

Identifying alternative endpoints to access a client is well known in the art. Thus, given the teachings of Osterman et al., it would have been obvious to a person of ordinary skill in the art, at the time of the present invention, to modify the teachings of Killian, in order to identify alternative endpoints in accessing the client. This would have allowed the transport of messages through different endpoints. Thus, it would have been apparent to one of ordinary skill in the art to identify alternative endpoints in order to transmit messages to the client via alternate interfaces, Osterman et al., col. 1, lines 38-45. Therefore, the claimed invention (claim 21) would have been an obvious modification of the methods disclosed by Killian, in view of Osterman et al.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Killian, U.S. Patent 6,438,592 discloses a system for monitoring performance on the World Wide Web.

Okanoya et al., U.S. Patent 6,128,657 discloses a load sharing system.

Osterman et al., U.S. Patent 5,864,669 discloses a method and system for accessing server applications through different endpoints.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hassan Phillips whose telephone number is (703) 305-8760. The examiner can normally be reached on M-F 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenton Burgess can be reached on (703) 305-4792. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7201.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.


FRANTZ B. JEAN
PRIMARY EXAMINER